

01/14/85

Sublease Assignment  
relating to Supplement #17

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INTERSTATE COMMERCE COMMISSION

**ASSIGNMENT OF JULY 3, 1984 SUBLEASE BETWEEN  
MINNESOTA, DAKOTA AND WESTERN RAILROAD COMPANY AND  
BURLINGTON NORTHERN RAILROAD COMPANY TO ITEL**

**ASSIGNMENT OF SUBLEASE AND AGREEMENT** dated as of December 21, 1984 (hereunder called this "Assignment"), by and between **MINNESOTA, DAKOTA AND WESTERN RAILROAD COMPANY**, a Minnesota corporation and **ITEL RAIL CORPORATION**, a Delaware corporation ("Itel").

**WHEREAS**, Itel has entered into a Consolidated, Amended, and Restated Equipment Trust Agreement, dated January 1, 1982, (the "ETC Modification Agreement"), and pursuant to the ETC Modification Agreement, Itel has certain obligations with respect to the Itel Corporation, Itel Rail Corporation 10% Amended Equipment Trust Certificates, 1978 Series 3, due 1994 as set forth in Schedule 2F of the ETC Modification Agreement (the "Amended 1978 Series 3 Trust Certificates"); and

**WHEREAS**, Itel is the successor in interest to Itel Corporation, Rail Division, pursuant to the Agreement which is part of Itel Corporation's Amended Plan of Reorganization which became effective on September 19, 1983; and

**WHEREAS**, Itel and Valley and Siletz Railroad Company ("VS") have entered into a Lease (as defined in the ETC Modification Agreement) of Equipment (as defined in the ETC Modification Agreement) dated as of July 26, 1978, which was assigned to the Minnesota, Dakota and Western Railroad Company ("MDW") pursuant to an Assignment Agreement dated as of July 2, 1984 (such Lease, together with any amendments or supplements thereto, called the "Lease") providing for the leasing by Itel to VS of certain units of the Trust Equipment (as defined in the ETC Modification Agreement); and

**WHEREAS**, the Lease may also cover the leasing to VS of other Equipment not included as part of the Trust Equipment; and

**WHEREAS**, in order to provide security for the obligations of Itel under the ETC Modification Agreement, Itel assigned for security purposes its rights, to and under the Lease, as amended, to First Security Bank of Utah, National Association, as trustee ("Trustee") as and only to the extent that the Lease relates to the Trust Equipment by means of an Assignment (as defined in the ETC Modification Agreement) dated as of January 15, 1979; and

**WHEREAS**, MDW has entered into a Sublease (as defined in the ETC Modification Agreement) with the Burlington Northern Railroad Company (hereinafter called the "Sublessee") dated as of July 3, 1984 (such Sublease together with any amendments and supplements thereto called the "Sublease") (providing for the subleasing by MDW to the Sublessee of certain units of the Trust Equipment (the "Subleased Trust Equipment")); and

WHEREAS, in order to provide security for the obligations of MDW under the Lease, MDW agrees to assign to Itel for security purposes only, MDW's rights in, to and under the Sublease as and only to the extent that the Sublease relates to the Subleased Trust Equipment.

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto hereby agree as follows:

1. MDW hereby assigns, transfers, and sets over unto Itel, as collateral security for the payment and performance of MDW's obligations under the Lease, with respect to the 1978 Series 3 Trust Certificates, all of MDW rights, title and interest, powers, privileges and other benefits under the Sublease as and only to the extent that the Sublease relates to the Subleased Trust Equipment set forth in Annex A hereto, including, without limitations, all rights to receive and collect all rentals, profits and other sums payable to or receivable by MDW from the Sublessee under or pursuant to the provisions of the Sublease, whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such monies being hereinafter called the "Payments"); provided, however, that until a Default (as defined in the Lease) or an Event of Default (as defined in the Lease) shall occur, it is understood that MDW shall be entitled to collect and receive all the Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Sublease, and to apply all Payments to which MDW is entitled hereunder to the payment of any and all of MDW's obligations under the Lease and to retain the balance, if any. Also provided, however, that after the occurrence of a Default or an Event of Default, both as defined in the Lease, and until a Default (as defined in the ETC Modification Agreement) or an Event of Default (as defined in the ETC Modification Agreement) shall occur, it is understood that Itel shall be entitled to collect and receive all Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease and to apply all Payments to which Itel is entitled hereunder to the payment of any and all of Itel's obligations under the ETC Modification Agreement and to retain the balance, if any. In furtherance of the foregoing assignment, but subject to the foregoing provisions of this paragraph, MDW hereby irrevocably authorizes and empowers Itel in its own name, in the name of its nominee or in the name of MDW or as its attorney, to ask, demand, sue for, collect and receive any and all the Payments to which MDW is or may become entitled under the Sublease, and to enforce compliance by the Sublessee with all the terms and provisions thereof. Whenever a Sublease covers other Equipment not included as part of the Subleased Trust Equipment and the amount of any payment due to MDW under such Sublease as car hire payments (including both straight and incentive per diem), mileage charges, or other rental revenues is calculated on an aggregate basis for all Equipment subleased thereunder, for the purposes of this Assignment an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to such Subleased Trust Equipment subleased under such Sublease. The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be the number of units of

Equipment comprising such Subleased Trust Equipment subleased under such Sublease and the denominator of which shall be the aggregate number of units of Equipment (including such units of Subleased Trust Equipment) at the time subleased under such Sublease.

2. This Assignment is executed only as security for the obligations of MDW pursuant to the Lease and to Paragraphs 7 and 13 of the Sublease with respect to the Amended 1978 Series 3 Trust Certificates under the Lease and, therefore, the execution and delivery of this Assignment shall not in any way affect or modify, the liability of MDW under the Sublease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of MDW to the Sublessee shall be and remain enforceable by the Sublessee, its successor and assigns, against, and only against persons other than the Trustee or any holder of Amended 1978 Series 3 Trust Certificates.
3. To protect the security afforded by this Assignment, MDW agrees as follows:
  - (a) MDW will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Sublease provides is to be performed by MDW except as otherwise agreed between the parties in writing; and  
including the Lease or amendments thereto
  - (b) At MDW's sole cost and expense, MDW will appear in and defend every action or proceeding arising under, growing out of, or in any manner connected with the obligations, duties or liabilities of MDW except as otherwise agreed between the parties in writing;  
including the Lease or amendments thereto
  - (c) Should MDW fail to make any payment or to do any act which this Assignment requires MDW to make or do, then Itel may, but without obligation so to do, first making written demand upon MDW and affording MDW a reasonable period of time within which to make such payment or do such act, but without releasing MDW from any obligation hereunder, make or do the same in such manner and to such extent as Itel may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of Itel, and also the right to perform and discharge each and every obligation, covenant and agreement of MDW contained in the Sublease.
4. Upon the full discharge and satisfaction of all of MDW's obligations under the Lease and this Assignment, all rights herein assigned to Itel shall terminate and all estate, right, title and interest of Itel in and to the Sublease shall revert to MDW.
5. MDW will, from time to time, do and perform any other act and will execute, acknowledge and deliver and file, register, deposit and record (and will refile, reregister, rerecord, or redeposit whenever required)

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any and all further instruments required by law or reasonably requested by Itel in order to confirm or further assure the interests of Itel hereunder.

6. Itel may assign all or any of the rights assigned to it hereby or arising under the Sublease, including without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of Itel hereunder. Itel will give written notice to MDW and the Sublessee of any such assignment.
7. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by the laws of the United States permitting filing with the Interstate Commerce Commission.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names, by officers thereunto duly authorized, and their respective seals to be affixed and duly attested, all as of the date first above written.

**ITEL RAIL CORPORATION**

(Seal)

Attest:

Assistant

Secretary

By:

*J. P. Hayes*

**MINNESOTA, DAKOTA & WESTERN  
RAILROAD COMPANY**

(Seal)

Attest:

Secretary

ASSISTANT SECRETARY

By:

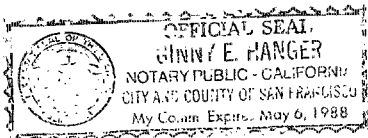
<sup>OK</sup>  
*Robert A. Schweg*  
President

ANNEX A

<u>No. of Units</u>	<u>Reporting Marks</u>	<u>Subleased Trust Equipment Description</u>	<u>AAR Mechanical Designation</u>
50	BN377000- 377049	100-ton, Plate F Boxcar, 15" end-of- car cushioning	XP
15	BN377050- 377064	100-ton, Plate F Boxcar, 15" end-of- car cushioning	XP
59	BN377065- 377123	100-ton, Plate F Boxcar, 15" end-of- car cushioning	XM

STATE OF CALIFORNIA     )  
                                      ) ss:  
COUNTY OF SAN FRANCISCO )

On this 11th day of February, 1985, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of IteI Rail Corporation, that the foregoing document was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



J. J. Hanger  
Notary Public

STATE OF Idaho     )  
                                      ) ss:  
COUNTY OF Ada     )

On this 31st day of January, 1985, before me personally appeared Robert H. February, to me personally known, who being by me duly sworn says that such person is President of MD&W Railroad, that the foregoing document was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carl R. Hanger  
Notary Public